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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

WESSEL, DUVAL & CO. v. WINBORNE & CO., Inc.

June 12, 1919.

[99 S. E. 719.]

1. Judgment (§ 142*)—Substituted Service—Foreign Defendants—Reopening Case.—A judgment against defendants in an action of assumpsit is without effect upon the filing of defendants' petition under Code 1904, § 2986, which allowed them to make a defense against the judgment as if they had appeared in the case before the same was rendered; the judgment being rendered under attachment without personal service and upon nonresident defendants.

2. Damages (§ 204*)—Necessity of Proof—Defendant Failing to Appear.—The plaintiff, in an action on an account against a defaulting defendant must prove his account, or else he can recover but one cent damages.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 167.]

3. Payment (§ 82 (3)*)—Recovery of Compulsory Payment—Voluntary Payment.—Where plaintiff, seeking to recover money paid for war risk insurance, had the option to pay, or else have a sale contract rescinded, and it elected to make the payment, such payment cannot be said to have been made under protest in the legal sense, but was voluntary and not recoverable.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 137.]

Error to Circuit Court of City of Norfolk.

Action by Winborne & Co., Incorporated, against Wessel, Duval & Co. Judgment for plaintiff, and defendant brings error. Reversed and rendered.

E. R. Baird, Jr., of Norfolk, for plaintiff in error.

J. Edward Cole, of Norfolk, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.